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VIAVIEW, INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual, and
VIAVIEW, INC, a corporation,
Plaintiffs,

vs.

THOMAS RETZLAFF, an individual,
DOES 1-5, individuals whose true names are not
known,
Defendants.

) Case No.: 5:14-cv-01059 BLF

) **NOTICE TO RETZLAFF TO REMOVE HIS**
) **FALSE, OFFENSIVE, SCURRILOUS,**
) **SCANDALOUS AND IMPROPER**
) **PLEADINGS WITHIN 21 DAYS, SERVED**
) **PURSUANT TO RULE 5, OR THAT**
) **PLAINTIFFS WILL FILE A RULE 11**
) **SANCTIONS MOTION THEREAFTER;**
) **RESPONSES TO FILINGS 126 AND 127.**

**NOTICE TO THE COURT AND TO *PRO SE* PARTY THOMAS RETZLAFF TO REMOVE
HIS FALSE, OFFENSIVE, SCURRILOUS, SCANDALOUS AND IMPROPER PLEADINGS
WITHIN 21 DAYS.**

As this case has progressed, Retzlaff has changed his ruthless yet overall rudderless course from attacking Plaintiffs to attacking Counsel for Plaintiff's with knowingly false offensive, scurrilous, scandalous and improper pleadings. He has done so in each and every filing he has made since his initial motions filed to challenge jurisdiction and service. His papers violate Rule 11 in each and every way. Litigation is not a game. The federal courts are not a vehicle for litigants, whether pro se or represented, to harass others by filing frivolous papers with the Court which wholly lack any

NOTICE TO DEFENDANT THOMAS RETZLAFF TO
WITHDRAW ALL IMPROPER PLEADINGS WITHIN 21 DAYS

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conceivable merit under the existing facts or law. This litigation is not a platform for Retzlaff to disparage Plaintiffs and Counsel and to drag Court decorum through the mud.

Retzlaff is no ordinary *pro se* litigant. He has been deemed a vexatious litigant by the State of Texas. A court had counted, many years ago, that Retzlaff had filed either 26 or 55 lawsuits (two findings were made). Retzlaff keeps filing meritless and offensive papers and he does so knowingly, claiming to be some rube who knows not the ways of federal courts. Such is not the case.

NOTICE IS HEREBY GIVEN THAT IF RETZLAFF DOES NOT WITHDRAW EACH AND EVERY PLEADING FILED, PLAINTIFFS WILL FILE A MOTION PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE. As Retzlaff, a *pro se* litigant seems to intentionally have trouble understanding what is appropriate and is not appropriate to file in papers with the court, Counsel will guide his hand after Plaintiffs summarily respond to his two latest filings.

**RESPONSES TO DOCUMENTS 126 AND 127 AND NOTICE TO RETZLAFF TO
WITHDRAW THESE DOCUMENTS OR FACE A RULE 11 MOTION FOR SANCTIONS**

A. Document 127, motion to strike Plaintiff's Second Amended Complaint.

Retzlaff is to remove document 127, "emergency" motion to strike Plaintiff's amended pleading. He knows or should know, based upon his legion experience, that *jurisdictional allegations are different than factual allegations and do not give rise to new causes of action*. Either way, Retzlaff's "emergency motion" is improper and should be withdrawn. The Court's order was scrupulously filed in that the only portion that was amended was that section that alleged jurisdictional allegations. His filing is another attempt to fail to fully inform the court of the correct facts and history.

Moreover, Retzlaff has the temerity to state that Plaintiff paid Lane Lipton "**a very large sum of money in settlement on account of their lying to the court and submitting FAKE evidence.**" Indeed, not a cent was paid to Ms. Lipton by Plaintiffs, or by anyone as far as Plaintiffs are aware. Where Retzlaff comes up with his fantasies Plaintiffs do not know, but if he is to litter his papers with false statements, he is to also withdraw them pursuant to Rule 11. At this point, Retzlaff is intentionally prodding Plaintiff's and Counsel and is well beyond the bounds of acceptable behavior in polite society, let alone a courtroom.

1 The Court was quite clear that Plaintiffs were to bring a proper Rule 11 motion, and this mixed
2 response and Rule 11 notice is the precursor to such a motion.

3 **B. Document 126, motion to dismiss for lack of subject matter jurisdiction**

4 Retzlaff is to remove document 126, motion to dismiss for lack of subject matter jurisdiction.
5 Retzlaff knows full well that Plaintiffs cannot allege a specific jurisdiction that Retzlaff is in because he
6 keeps asserting that he is in Arizona, then Texas, then “thousands of miles away” and then back to
7 Arizona and Texas. Retzlaff has still failed to update his address with the Court. Therefore, Plaintiffs,
8 and indeed the Court, must now assume he is still a resident of Arizona, though that is far from clear,
9 because as of law he has listed a Texas mailing address notwithstanding the fact that he has not filed a
10 change of address with this Court. If Mr. Retzlaff wishes to play such games with his location, he must
11 be responsible for the consequences thereof. Plaintiffs have alleged that he is a resident of Texas or
12 Arizona. No one can ascertain with certainty what “thousands of miles away” means. Accordingly,
13 Retzlaff’s pleading is intentionally misleading within the meaning of Rule 11 and improper and must be
14 withdrawn within 21 days.

15 Retzlaff also knows or should know that Plaintiffs have credibly and specifically alleged losses
16 in excess of \$200,000.00. As such, the amount in controversy is satisfied based upon actual losses, not
17 speculative losses. In other words, these losses are hard financial losses and have nothing to do with
18 other damages. Indeed, Retzlaff knows these losses increase each month, as Retzlaff’s conduct
19 continues to not abate in light of this suit, but rather, this suit has caused him to increase his behaviors,
20 causing more losses. Accordingly, Retzlaff’s pleading is intentionally misleading and improper within
21 the meaning of Rule 11 and must be withdrawn within 21 days.

22 Moreover, in paragraph 20 Retzlaff mocks Counsel’s “histrionics,” yet he is terrified to set foot
23 in Santa Clara County, knowing the potential exists he will be arrested. If Retzlaff is so certain his
24 theory is correct, let him come to Santa Clara County. Retzlaff also has some idea that police
25 investigations happen overnight and that police would simply call him to ask him if he is guilty. Such is
26 not the way criminal justice works.

27 Counsel does not suffer death threats to his wife and 3 year old child lightly. Retzlaff refers to
28 damages as a product of Plaintiff AND Counsel’s **“fevered imaginations.”** Retzlaff likes to be

1 intentionally offensive. **This paragraph is superfluous and is intended to harm Plaintiffs and**
2 **Counsel** within the meaning of Rule 11 and improper and must be withdrawn within 21 days.

3 To salt the wound of what was, on information and belief, clearly and unequivocally Retzlaff
4 making death threats against my family, he refers to me as “idiot Counsel.” He has also referred to
5 Counsel and Plaintiffs as stupid on prior occasions. That is improper and is sanctionable. The document
6 must be withdrawn. Moreover, Retzlaff only knows the exact words used because he taped the
7 proceeding and put it up on the internet in violation of court rules and criminal statutes.

8 **Plaintiffs agree to limited discovery, as Plaintiffs have requested it as part of our Anti-**
9 **SLAPP response.**

10 **OTHER RULE 11 VIOLATIONS**

11
12 Retzlaff has peppered his papers with so many superfluous insults, pejoratives, falsehoods, and
13 downright nasty comments that it is impossible to list and correlate each of the 127 documents at this
14 point. Suffice to say, Retzlaff, who cannot control himself for one minute, has done this in each and
15 every one of his documents. As an experienced vexatious litigant, he knows better.

16 Retzlaff is to remove each and every paper filed with the Court wherein he calls or alludes to
17 Counsel being a drug user or addict. This is false and Retzlaff knows it.

18 Retzlaff is to remove all papers filed with the Court where he asserts that Plaintiffs or counsel
19 have placed fake, false or intentionally improper pleadings before the court, or that Counsel has
20 committed perjury in his declarations, or that Plaintiff and Counsel have engaged in witness tampering.
21 Plaintiffs have done no such thing and Retzlaff knows it.

22 Retzlaff is to remove all papers filed with the Court where he asserts that Counsel took a
23 \$250,000.00 loan against his real estate to finance this and other litigation, and moreover, to withdraw
24 pleadings where he published Counsel’s mortgage as supposed proof thereof. This is false and meant to
25 try to scare or embarrass counsel off the case and Retzlaff knows it.

26 Retzlaff is to remove all papers filed with the Court wherein he asserts that Counsel is in some
27 sort of conspiracy with Plaintiffs to file false, fraudulent or frivolous litigation against Retzlaff. Retzlaff
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1 knows or reasonably should know the roles of Counsel and Plaintiff and that Counsel is not in privity
2 with his client in any way.

3 Retzlaff is to remove any papers filed with the court where he states he is judgment proof. On
4 information and belief, as well as actual research, Retzlaff is aware of and brags that he is the
5 beneficiary of a large trust and a corporation administering the trust.

6 Retzlaff is to remove all papers filed with the Court where Retzlaff asserts that Counsel's wife
7 has anything to do with this case. That is false and Retzlaff knows it.

8 Retzlaff is to remove any papers filed with the Court wherein he asserts that Plaintiff or Counsel
9 are computer hackers or are using computer hackers to somehow gain an advantage in this litigation.
10 Retzlaff knows that McGibney, a former Marine would never do such a thing. Moreover, it is readily
11 available in many, many profiles of counsel or articles featuring his quotes that Counsel is a relative
12 Luddite who has no skills to do any such thing, nor would Counsel if he developed any skills. Retzlaff
13 has, for some reason, referenced these articles and excerpts in his papers filed with the court. He has
14 actual knowledge of these facts. They are not relevant. Thus, he has violated Rule 11 and 12.

15 Retzlaff is to remove any papers filed with the Court that reference to Counsel being a California
16 State Bar Certified Federal Criminal Law Specialist. Retzlaff knows or reasonable should know,
17 especially in that Counsel has said so in pleadings, that Counsel is a State Court Criminal Law
18 Specialist.

19 Retzlaff is to remove any references to Counsel herein as to being involved as Counsel in any
20 way in the Texas case. In that it says that Leiderman is "*of Counsel*." In the suit, Retzlaff is aware that
21 days later the attorney in Texas, who had never spoken with Counsel herein, removed that page and
22 apologized to the court. Retzlaff is obsessed with the Texas litigation that his "dear friend" Jeffrey
23 Dorrell is working on for defendant Rauhauser (though Retzlaff has declared there is no connection
24 whatsoever between him and Rauhauser.) Retzlaff knows Counsel herein not to be involved in the
25 Texas suit.

26 Retzlaff is to remove any papers filed with the Court wherein he states that Plaintiffs or Counsel
27 have intentionally filed naked pictures of his daughter. This is blatantly false and anyone with a pair of
28

1 eyes can see that the pictures are blurred out to the point of incomprehensibility. If Mr. Retzlaff is
2 legally blind Counsel withdraws this demand.

3 Moreover, the person who is pictured, Brittany Retzlaff, has stated that the pictures do not show
4 her naked and that she wants them as part of the record in this case so that the world can see what her
5 father, Thomas Retzlaff, did to her. Retzlaff falsely accuses Plaintiff McGibney of posting the pictures.
6 As Retzlaff posted the pictures years before he knew of Mr. McGibney, he knows these allegations to be
7 false.

8 Retzlaff is to remove any paper filed with the Court wherein he attacks potential witnesses not
9 brought forth before the court including but not limited to publishing their address, as a corollary,
10 Retzlaff is to remove the pleading (Document 80) wherein he publishes Adam Steinbaugh's address and
11 calls him a substance abuser with mental health issues who cannot pass the moral character portion of
12 the bar exam. Retzlaff does this for no reason other than to harass Mr. Steinbaugh into not being a
13 witness in this case. Retzlaff knows or should know the allegations made against Mr. Stainbaugh in his
14 papers are false.

15 Retzlaff is to remove any papers files with this Court wherein he asserts that Plaintiffs are under
16 investigation by the California Attorney General's Office. Retzlaff knows or should reasonably know
17 this is false.

18 In Retzlaff's "Anti-SLAPP motion he asserts knowingly false theories of law, for example, he
19 asserts that Plaintiffs failed to plead actual malice in their complaint. The complaint clearly states in the
20 defamation cause of action: "Defendants made the aforementioned statements either knowing they were
21 false or in reckless disregard of the truth and with actual malice, hatred and ill will." Retzlaff does this
22 repeatedly. The pleading is false and misleading and is an attempt to fool the Court. It must be
23 withdrawn. (See Doc 59, Paragraph 36 & 37.) Moreover, Retzlaff enjoys no "CDA 230" immunity in
24 that Plaintiffs have alleged that he personally made the postings in question.

25 These requests cover each and every filing Retzlaff has made with the Court. In that he has
26 failed to comply with Rule 11, each pleading must be withdrawn within 21 days, including his latest
27 motions to strike the amended complaint.

1 Dated: 30 December 2014

LAW OFFICES OF JAY LEIDERMAN

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3 By: /s/ Jay Leiderman

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